

## REMARKS

### **Status Of Application**

Claims 1-40 and 42-58 were pending in the application; the status of the claims is as follows:

Claims 17-38 are withdrawn from consideration;

Claims 39 and 58 are rejected under the first paragraph of 35 U.S.C. § 112;

Claims 8, 16, 48, and 50-57 are rejected under the second paragraph of 35 U.S.C. § 112;

Claims 1, 2, 9-11, 39, 40, 42, 44, 49, and 58 are rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 4,480,715 to Brooks (hereinafter "Brooks");

Claims 1-3, 7, 39, 40, 42, 43, 47, and 58 are rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 5,082,310 to Bauer (hereinafter "Bauer"); and

Claims 1-16, 39, 40, and 42-58 are rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 5,501,890 to Mills (hereinafter "Mills") in view of Bauer.

### **Claim Amendments**

Claims 1 and 40 have been amended to more particularly point out and distinctly claim the invention.

Claims 44 and 57 have been amended to correct clerical errors therein. Claims 50-56 have been amended to overcome a § 112 rejection thereof.

### **35 U.S.C. § 112 Rejections**

#### **Claims 39 and 58**

The rejection of claims 39 and 58 under the first paragraph of 35 U.S.C. § 112 is respectfully traversed based on the following.

The present issue is whether the specification includes a written description of the invention as claimed in claims 39 and 58 sufficient to satisfy the requirement under § 112. Specifically, the Office Action alleges that the specification provides inadequate support for a substantially rigid fixed portion.

The specification as originally filed states that the “fixed portion” can be solid cardboard.<sup>1</sup> As pointed out in the Amendment filed on August 28, 2002, “Davey Board” is a well-known type of solid cardboard. As also pointed out in the August 28, 2002 Amendment, it is well known in the art that “Davey Board” is a particularly strong type of cardboard that is “good enough to withstand severe stresses.”

In response to the information provided by the Applicant in the August 28, 2002 Amendment, the present Office Action has raised several points, each of which the Applicant will now address.

First, the present Office Action states that there is no original disclosure directed specifically to Davey Board, a well-known type of cardboard. However, since “Davey Board” does not appear in any of the claims, there is no requirement for any original disclosure directed specifically to Davey Board cardboard. The Davey Board cardboard was merely used as an example to show that “it is well known to have a rigid piece of cardboard that is about 2 mm thick”<sup>2</sup> in response to the allegation that “[c]learly cardboard 2 mm thick is not normally considered substantially rigid.”<sup>3</sup>

Second, the present Office Action states “it is not seen how the phrase ‘good enough to withstand severe stresses’ equates to ‘substantially rigid’.”<sup>4</sup> In response, it should be noted that the phrase “good enough to withstand severe stresses” is from a description of Davey Board submitted with the August 28, 2002 Amendment as Exhibit C. More completely, the phrase reads “good enough to withstand severe stresses to which

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<sup>1</sup> Specification as filed, page 8, lines 26-28.

<sup>2</sup> Amendment, page 16, lines 1-2 (August 28, 2002).

<sup>3</sup> Office Action, page 2, lines 8-9 (May 29, 2002).

<sup>4</sup> *Id.*, at lines 10-11.

books are subjected.” It is widely known that books tend to be subject to flexural or bending stress due to bending actions caused by various types of external loads during normal use. Thus, it is readily apparent that the “stresses” referred to at least include flexural or bending stress. Bearing in mind that the term “rigid” typically refers to something stiff that resists bending, it follows that a “rigid” or “substantially rigid” item would resist or substantially resist bending stress. Therefore, if the advertised Davey Board cardboard is “good enough to withstand severe stresses to which books are subjected,” it would be readily apparent to one skilled in the art that the same Davey Board cardboard could be considered to be at least “substantially rigid.”

Finally, with respect to the comments in the Office Action regarding “other materials”, based on the discussions above it should be readily apparent that the recitation of “other material” in the specification need not be relied upon in order to provide more than adequate support for a “substantially rigid” panel in claims 39 and 58.

Furthermore, while the phrase “substantially rigid panel” may not be *explicitly* recited in the specification, it is at least *implicitly* or *inherently* described such that one skilled in the art would readily recognize disclosure of a panel having at least substantially rigid properties. For example, the specification provides that:

Referring now to FIGS. 2-4, shown therein is the assembled upholstery pad 100 of FIG. 1. The padding members 104 extend between and are adhesively attached to the panel 102 and the sheet 106. The **sheet 106 is tensioned across the padding members 104, which locally compresses the padding members 104 and thus causes the corner areas 126 to become rounded. The sheet 106, which is adhesively attached to areas on the front surface of the panel 102 that are not covered by the padding members 104, extends around the edges of the panel 102 and is attached to the back surface 124 (see FIG. 1) of the panel 102.**<sup>5</sup>

While it is certainly not necessary for the panel to be rigid, or even substantially rigid, in order for the sheet to be tensioned across and attached to the back surface of the panel, thus causing the padding members to be compressed and the corner members to become

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<sup>5</sup> Specification as filed, page 6, lines 11-20 (emphasis added).

rounded, one skilled in the art would appreciate that the corresponding panels shown in Figs. 3 and 4 would have at least substantially rigid panels since the exemplary panels shown in Figs. 3 and 4 are somewhat straight despite the tension of the sheets acting upon them as described above. As set forth in MPEP 2163.07(a):

**By disclosing in a patent application a device that inherently performs a function or has a property, operates according to a theory or has an advantage, a patent application necessarily discloses that function, theory, or advantage, even though it says nothing explicit concerning it.** The application may later be amended to recite the function, theory or advantage without introducing prohibited new matter.

(emphasis added.) Thus, by providing the disclosure discussed above, the original disclosure of the specification necessarily discloses a “substantially rigid” panel as recited in claims 39 and 58.

Therefore, based on at least the reasons presented above, since the claimed subject matter of claims 39 and 58 is described in sufficient detail in the specification as filed such that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention, it is respectfully requested that the rejection of claims 39 and 58 under the first paragraph of 35 U.S.C. § 112 be reconsidered and withdrawn.

#### **Claims 8, 16, 48, and 57**

The rejection of claims 8, 16, 48, and 57 under the second paragraph of 35 U.S.C. § 112 is respectfully traversed based on the following.

The Office Action alleges that “[t]he phrase ‘push-type’ renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by “push-type”), thereby rendering the scope of the claim(s) unascertainable.”<sup>6</sup>

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<sup>6</sup> Office Action, page 4, lines 5-8 (September 24, 2002).

In order to clarify, each of claims 8, 16, 48, and 57 recites “push-type panel fastener”.

Attention is drawn to page 1, lines 10-12 of the specification, which states that “[a]n upholstery pad is generally attached to an interior wall substructure of a vehicle by using mechanical push-type fasteners (e.g. “Christmas tree” fasteners).” This is acknowledged in the present Office Action, which states that “push fasteners are well known in the art,” even alleging that “it would have been obvious to one of ordinary skill in the art to use a well known fastener, such as a push fastener....”<sup>7</sup>

As provided by MPEP 2173.05(a):

**If the claims, read in light of the specification, reasonably apprise those skilled in the art both of the utilization and scope of the invention, and if the language is as precise as the subject matter permits, the statute (35 U.S.C. 112, second paragraph) demands no more.**

Given that “push-type” incorporates a boundary in terms of what type of fastener is being claimed, and given that it has been established that “push-type fasteners” are known in the art, it is respectfully pointed out that one of ordinary skill in the art would be apprised of the scope of claims 8, 16, 48, and 57.

Accordingly, it is respectfully requested that the rejection of claims 8, 16, 48, and 57 under the second paragraph of 35 U.S.C. § 112 be reconsidered and withdrawn.

#### **Claims 50-56**

The rejection of claims 50-56 under the second paragraph of 35 U.S.C. § 112 is respectfully traversed based on the following. By this Amendment, claims 50-56 have been amended to correct the antecedency issue raised in the Office Action. Accordingly, it is respectfully requested that the rejection of claims 50-56 under the second paragraph of 35 U.S.C. § 112 be reconsidered and withdrawn.

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<sup>7</sup> Id., at page 3, lines 22-24.

**35 U.S.C. § 102(b) Rejections**

**Brooks**

The rejection of claims 1, 2, 9-11, 39, 40, 42, 44, 49, and 58 under 35 U.S.C. § 102(b) over Brooks is respectfully traversed based on the following.

Each of claims 1 and 40 require a combination of a panel, a padding member, and a sheet. Brooks discloses a sight and sound barrier that only includes foam surrounded by a sheet of material. Therefore, Brooks fails to disclose all of the limitations of claim 1, and Brooks fails to disclose all of the limitations of claim 40. Accordingly, Brooks cannot anticipate claim 1, or claims 2, 9-11, and 39 which depend from claim 1, and Brooks cannot anticipate claim 40, or claims 42, 44, 49, and 58 which depend from claim 40.

Accordingly, it is respectfully requested that the rejection of claims 1, 2, 9-11, 39, 40, 42, 44, 49, and 58 under 35 U.S.C. § 102(b) over Brooks be reconsidered and withdrawn.

**Bauer**

The rejection of claims 1-3, 7, 39, 40, 42, 43, 47, and 58 under 35 U.S.C. § 102(b) over Bauer is respectfully traversed based on the following.

***Claims 1-3, 7, and 39***

Claim 1, as amended, recites:

wherein pivoting said **first flap about said first hinge** away from **said first relaxed position** and toward said first biased position **causes a first force** to be produced **which assists in maintaining an installed position** of the pad by urging said first flap to be pivoted about said first hinge toward said first relaxed position.

Bauer is directed to a deployment opening for an automotive airbag. Bauer discloses a seam along which opposing doors will open in the event that the airbag deploys. Even if, for the sake of argument, one were to consider equating the seam to a hinge and one of the doors to a first flap, Bauer still fails to disclose that the first flap is pivoted about the hinge to cause a force which assists in maintaining an installed position. Therefore, since Bauer fails to disclose all of the limitations of claim 1, Bauer cannot anticipate claim 1, or claims 2, 3, 7, and 39 which depend from claim 1.

***Claims 40, 42, 43, 47, and 58***

Claim 40, as amended, recites:

**wherein pivoting said first flap about said first hinge away from said first relaxed position and toward said first biased position causes a first force to be produced which urges said first flap to be pivoted about said first hinge toward said first relaxed position and wherein said first flap is positioned in said first biased position when said upholstery pad is positioned in said substructure such that said upholstery pad is maintained in position in said substructure by a frictional force between said upholstery pad and said substructure, wherein the frictional force is due at least in part to said first force.**

Bauer is directed to a deployment opening for an automotive airbag. Bauer discloses a seam along which opposing doors will open in the event that the airbag deploys. Even if, for the sake of argument, one were to consider equating the seam to a hinge and one of the doors to a first flap, Bauer still fails to disclose that the first flap is pivoted about the hinge when the deployment door assembly is installed. Therefore, since Bauer fails to disclose all of the limitations of claim 40, Bauer cannot anticipate claim 40, or claims 42, 43, 47, and 58 which depend from claim 40.

Accordingly, it is respectfully requested that the rejection of claims 1-3, 7, 39, 40, 42, 43, 47, and 58 under 35 U.S.C. § 102(b) over Bauer be reconsidered and withdrawn.

**35 U.S.C. § 103(a) Rejection**

The rejection of claims 1-16, 39, 40, and 42-58 under 35 U.S.C. § 103(a) over Mills in view of Bauer is respectfully traversed based on the following.

***Claims 1-16 and 39***

Claim 1, as amended, recites:

wherein pivoting said **first flap about said first hinge away from said first relaxed position** and toward said first biased position **causes a first force** to be produced **which assists in maintaining an installed position** of the pad by urging said first flap to be pivoted about said first hinge toward said first relaxed position.

Mills and Bauer are both directed to deployment openings for an automotive airbag. Mills and Bauer both disclose a seam along which opposing doors will open in the event that the airbag deploys. Even if, for the sake of argument, one were to consider equating the seams to a hinge and one of the doors to a first flap, the combination of Mills and Bauer still fails to disclose that the first flap is pivoted about the hinge to cause a force which assists in maintaining an installed position. In fact, one skilled in the art would clearly appreciate that a seam as taught in both Mills and Bauer must be installed flat (un-pivoted) in order to allow for separation along the seam upon deployment of the airbag. Therefore, there is no suggestion or motivation in the combination of Mills and Bauer to pivot the airbag doors about the seam in order to somehow generate a force to maintain an installed position. Accordingly, since the combination of Mills and Bauer fails to disclose or suggest all of the limitations of claim 1, the combination of Mills and Bauer cannot render obvious claim 1, or claims 2-16 and 39 which depend from claim 1.



***Claims 40 and 42-58***

Claim 40, as amended, recites:

wherein **pivoting said first flap about said first hinge** away from said first relaxed position and **toward said first biased position causes a first force** to be produced which urges said first flap to be pivoted about said first hinge toward said first relaxed position and **wherein said first flap is positioned in said first biased position when said upholstery pad is positioned in said substructure** such that said upholstery pad is **maintained in position** in said substructure **by a frictional force** between said upholstery pad and said substructure, **wherein the frictional force is due at least in part to said first force.**

Mills and Bauer are both directed to a deployment opening for an automotive airbag. Mills and Bauer both disclose a seam along which opposing doors will open in the event that the airbag deploys. Even if, for the sake of argument, one were to consider equating the seams to a hinge and one of the doors to a first flap, the combination of Mills and Bauer still fails to disclose that the first flap is pivoted about the hinge when the deployment door assembly is installed. In fact, one skilled in the art would clearly appreciate that a seam as taught in both Mills and Bauer must be installed flat (un-pivoted) in order to allow for separation along the seam upon deployment of the airbag. Therefore, there is no suggestion or motivation in the combination of Mills and Bauer to pivot the airbag doors about the seam in order to somehow generate a force to maintain an installed position. Accordingly, since the combination of Mills and Bauer fails to disclose or suggest all of the limitations of claim 40, the combination of Mills and Bauer cannot render obvious claim 40, or claims 42-58 which depend from claim 40.

Accordingly, it is respectfully requested that the rejection of claims 1-16, 39, 40, and 42-58 under 35 U.S.C. § 103(a) over Mills in view of Bauer be reconsidered and withdrawn.

**CONCLUSION**

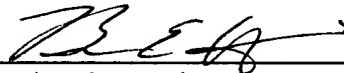
In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and an early reconsideration and a Notice of Allowance are earnestly solicited.

This Amendment does not increase the number of independent claims, does not increase the total number of claims, and does not present any multiple dependency claims. Accordingly, no fee based on the number or type of claims is currently due. However, if a fee, other than the issue fee, is due, please charge this fee to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260.

If an extension of time is required to enable this document to be timely filed and there is no separate Petition for Extension of Time filed herewith, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed.

Any other fee required for such Petition for Extension of Time and any other fee required by this document, other than the issue fee, and not submitted herewith should be charged to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260. Any refund should be credited to the same account.

Respectfully submitted,

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**APPENDIX**

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

The following is a marked-up version of the changes to the claims which are being made in the attached response to the Office Action dated September 24, 2002.

**IN THE CLAIMS:**

1. (Four Times Amended) An upholstery pad, comprising:

a panel having a front surface, a back surface, and a plurality of edges extending from said front surface to said back surface, said panel further having a fixed portion, a first hinge and a first flap, said first flap being divided from said fixed portion by said first hinge, said first flap being continuously pivotable about said first hinge between a first relaxed position and a first biased position, said first hinge being defined by a path of greater flexibility relative to portions of the panel not included in said path so as to provide a predetermined hinging position;

a padding member having a front surface and a back surface, at least a portion of said back surface of said padding member being adhesively attached to said front surface of said panel, wherein said padding member extends across said first hinge; and

a sheet having a front surface and a back surface, at least a portion of said back surface of said sheet being adhesively attached to said front surface of said padding member;

wherein pivoting said first flap about said first hinge away from said first relaxed position and toward said first biased position causes a first force to be produced which assists in maintaining an installed position of the pad by urging ~~urges~~ said first flap to be pivoted about said first hinge toward said first relaxed position.

40. (Three Times Amended) An upholstery pad for mounting on a substructure, comprising:

a panel having a front surface, a back surface, and a plurality of edges extending from said front surface to said back surface, said panel further having a fixed portion, a

first hinge and a first flap, said first flap being divided from said fixed portion along said first hinge, said first flap being continuously pivotable about said first hinge between a first relaxed position and a first biased position, said first hinge being defined by a path of greater flexibility relative to portions of the panel not included in said path so as to provide a predetermined hinging position;

a padding member having a front surface and a back surface, at least a portion of said back surface of said padding member being adhesively attached to said front surface of said panel, wherein said padding member extends across said first hinge; and

a sheet having a front surface and a back surface, at least a portion of said back surface of said sheet being adhesively attached to said front surface of said padding member;

wherein pivoting said first flap about said first hinge away from said first relaxed position and toward said first biased position causes a first force to be produced which urges said first flap to be pivoted about said first hinge toward said first relaxed position and wherein said first flap is positioned in said first biased position when said upholstery pad is positioned in said substructure such that said upholstery pad is maintained in position in said substructure by a frictional force between said upholstery pad and said substructure, wherein the frictional force is due at least in part to ~~by~~ said first force.

44. (Once Amended) An upholstery pad, according to claim ~~42~~, 43, wherein said sheet extends across and is adhesively attached to at least one of said edges of said panel and extends onto and is adhesively attached to said back surface of said panel.

50. (Once Amended) An upholstery pad, according to claim 49, ~~48~~, wherein said second flap is positioned in said second biased position when said upholstery pad is positioned in said substructure such that said upholstery pad is maintained in position in said substructure by a frictional force between said upholstery pad and said substructure by said second force.

51. (Once Amended) An upholstery pad, according to claim 49, ~~48~~, wherein said second force is at least partially caused by said padding member being placed in

tension when said second flap is pivoted about said second hinge away from said second relaxed position and toward said second biased position.

52. (Once Amended) An upholstery pad, according to claim 49, ~~48~~, wherein said sheet extends across and is adhesively attached to at least one of said edges of said panel and extends onto and is adhesively attached to said back surface of said panel.

53. (Once Amended) An upholstery pad, according to claim 49, ~~48~~, wherein said second hinge comprises a portion of said panel where said panel is perforated.

54. (Once Amended) An upholstery pad, according to claim 49, ~~48~~, wherein said first hinge comprises a portion of said panel where said second flap is detached from said fixed portion.

55. (Once Amended) An upholstery pad, according to claim 49, ~~48~~, wherein said first hinge comprises a portion of said panel where said front surface of said panel is scored.

56. (Once Amended) An upholstery pad, according to claim 49, ~~48~~, wherein said fixed portion is mechanically fastened to a substructure.

57. (Once Amended) An upholstery pad, according to claim ~~55~~, 56, wherein said fixed portion of said panel is fastened to said substructure by at least one push-type panel fastener.